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7590

07/28/2005

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| EXAMINER |
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CASTELLANO, STEPHEN J

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| ART UNIT | PAPER NUMBER |
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3727

DATE MAILED: 07/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

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|------------------------------|-----------------------------------|----------------------------------|--|
| Office Action Summary | Application No. 10/669,406 | Applicant(s) ROSENBERG ET AL. | |
| | Examiner Stephen J. Castellano | Art Unit 3727 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 July 2005.
 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 5,9,11-13,16 and 21-23 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
 5) ☐ Claim(s) _____ is/are allowed.
 6) ☒ Claim(s) 5,9,11-13,16 and 21-23 is/are rejected.
 7) ☒ Claim(s) 9 and 23 is/are objected to.
 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
 10) ☒ The drawing(s) filed on 05 April 2005 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claims 1-4, 6-8, 10, 14, 15 and 17-20 have been canceled. Claims 5, 9, 11-13, 16 and 21-23 are pending.

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, raised edges that are releasably engaged with each other as in claim 23 and the raised serrated edge of claim 9 must be shown or the feature(s) canceled from the claim(s). No new matter should be entered. Unfortunately, newly submitted Fig. 9 is considered new matter.

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Claims 9 and 23 are objected to because they do not show what is claimed, i.e., raised edges that are releasably engaged with each other as in claim 23 and the raised serrated edge of claim 9.

The disclosure is objected to because the drawing amendment submitted April 20, 2005 contains new matter. Newly submitted Fig. 9 discloses that the serrations extend longitudinally along the length of the raised edges in the view at the top of Fig. 9 and Fig. 9 also discloses that the serrations extend transversely along the width of the raised edges in the view at the bottom of Fig. 9. The direction that the serrations extend was not disclosed originally. Both views of Fig. 9 disclose the number, size (length, width, depth), shape (saw tooth) and that lower depth serrations can be combined with larger depth serrations; all of this was not originally disclosed. Figure 9 must be withdrawn in applicant's next response.

The following is a quotation of the first paragraph of 35 U.S.C. 112:

Art Unit: 3727

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5, 9, 11-13, 16 and 21-23 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Claim 21 states that the three raised edges of the second element define a bottom surface (see page 3, line 16) and that the two raised edges of the third element define a bottom surface (see page 3, line 22). Claim 22 states that the two raised edges of the fourth element define a bottom surface (see first two lines of the claim). There is no support in the original disclosure for the raised edges defining bottom surfaces. This limitation is important since a raised edge would have to extend has a bottom surface of the organizer or at least as the bottom surface of the respective element. This may read over the Rosenberg references and the Wilk reference since the bottom surfaces of these references are formed as a horizontal panel that meets the sidewall or raised edge. For these references, the raised edge(s) doesn't fully define a bottom surface but rather partially defines the bottom surface by defining an edge(s) of the bottom surface. **This is a new matter rejection.**

Claim 22 states "the fourth element being substantially in mirror image relationship to said third element." There is no support in the original disclosure for this limitation. **This is a new matter rejection.**

The following is a quotation of the second paragraph of 35 U.S.C. 112:

Art Unit: 3727

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 5, 9, 11-13, 16 and 21-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 21 recites the limitation "the bottom surfaces of each of the **first**, second and third elements" on page 3, line 28. There is insufficient antecedent basis for this limitation in the claim because no bottom surface for the first element has previously been established.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5, 9, 11-13, 16 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Bidot.

Bidot discloses an organizer for use in a drawer to compartmentalize the drawer. The organizer includes individual element connected by wall panels that fit within slots, the elements are slidably nested together and each element has a planar bottom surface provided by a lower edge **(i.e., raised edges defining a bottom surface)**, the organizer can expand and contract in both the length and width directions to conform to drawer spaces of different size. Note that when the organizer length is smaller than the drawer inside length and the organizer width is smaller than the drawer inside width that the organizer is slidable within the drawer in both the length and width directions and that every element would also be slidable in the length and width directions.'

Art Unit: 3727

Re claim 5, the organizer includes the elements in combination with the drawer.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 5, 9, 11-13, 16 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bidot in view of Rosenberg et al. ('425), Rosenberg et al. ('961) and Rosenberg et al. ('433)(all three references being referred to collectively as Rosenberg).

This rejection is made insofar as "the raised edges define a bottom surface" limitation is understood and the bottom surfaces of the Rosenberg references are identical to applicant's bottom surfaces.

Bidot discloses vertical wall elements with each having a planar bottom. The vertical walls are the raised dividers. Bidot discloses the invention except for a bottom surface that has raised dividers. Rosenberg teaches the combination of bottom floor panels with a bottom surface and raised dividers as portions of the bottom surface. It would have been obvious to modify the elements of Bidot so that they have a floor or bottom surface extending from the raised dividers in order to cover the interior bottom surface of the drawer to provide a divider that can be lifted out while holding the organizers contents in each compartment to transfer the items as a whole unit in a segregated manner or to quickly clear out the drawer so that the drawer may hold other items.

Art Unit: 3727

Claims 5, 9, 11-13, 16 and 21-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rosenberg et al. ('425), Rosenberg et al. ('961) and Rosenberg et al. ('433)(all three references being referred to collectively as Rosenberg) in view of Wilk.

This rejection is made insofar as "the raised edges define a bottom surface" limitation is understood and the bottom surfaces of the Rosenberg references and Wilk are identical to applicant's bottom surfaces.

Rosenberg discloses a first element and two second elements. Rosenberg discloses the invention except for the third and fourth elements and a second element that can move in a width as well as a length direction. Wilk teaches four elements wherein the second, third and fourth elements can move in the length and width directions in relation to each other and the first element. It would have been obvious to add third and fourth elements and to replace one of the second elements with the third, fourth and second elements, respectively, of Wilk to provide an organizer that is adjustable to a greater extent since it adjusts in the width direction as well as the length direction. This is motivated by the adaptability to drawers of different width as well as drawers of different length. This makes the device is more useful.

All claims are drawn to the same invention claimed in the application prior to the entry of the submission under 37 CFR 1.114 and could have been finally rejected on the grounds and art of record in the next Office action if they had been entered in the application prior to entry under 37 CFR 1.114. Accordingly, **THIS ACTION IS MADE FINAL** even though it is a first action after the filing of a request for continued examination and the submission under 37 CFR 1.114. See MPEP § 706.07(b). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3727


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen J. Castellano whose telephone number is 571-272-4535. The examiner can normally be reached on M-Th 6:30-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lee W. Young can be reached on 571-272-4549. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 3727

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Stephen J. Castellano
Primary Examiner
Art Unit 3727

sjc